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ISSUANCES

of the

Meat and Poultry Inspection Program

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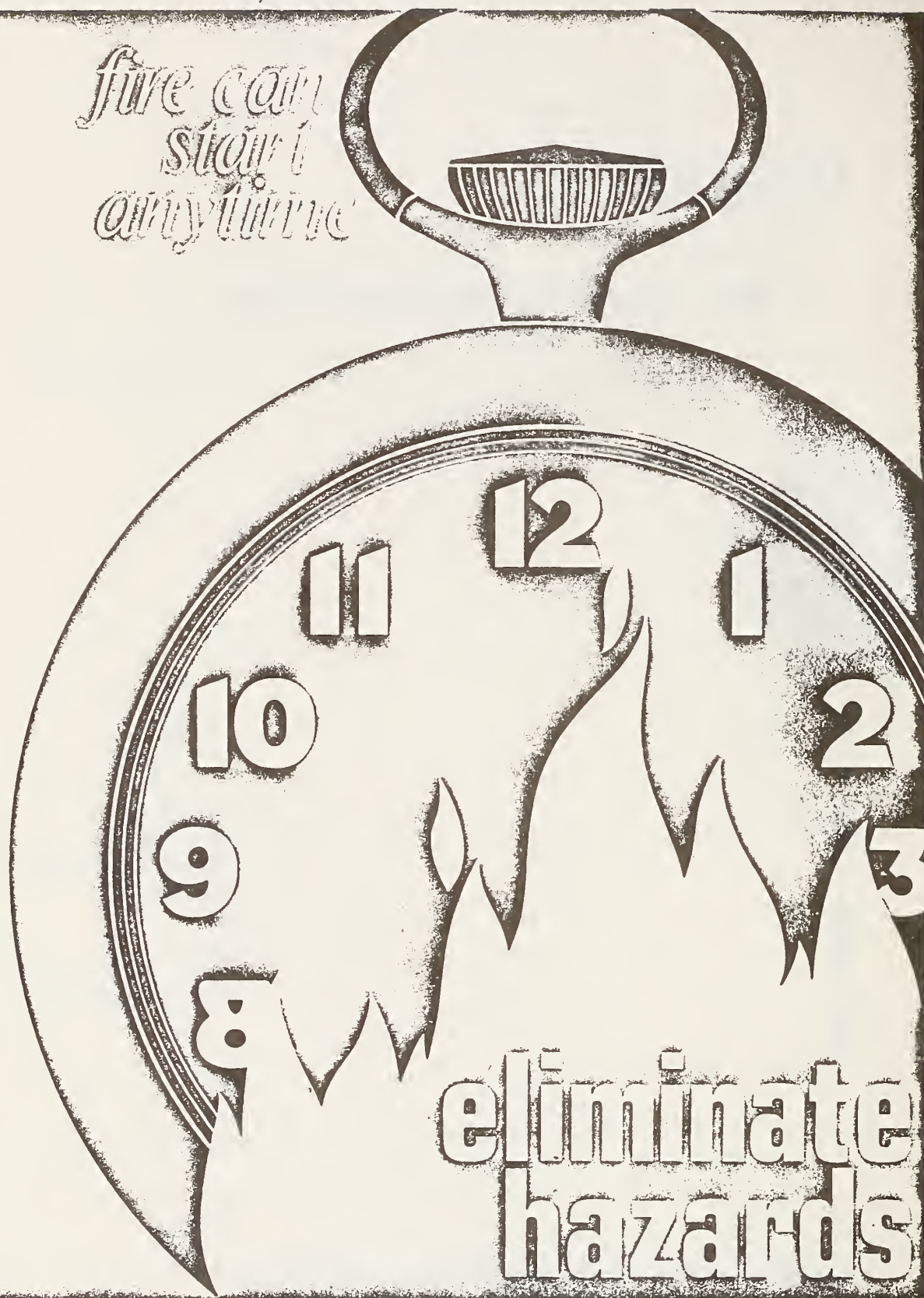
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Inspection Manual

UNITED STATES DEPARTMENT OF AGRICULTURE
Food Safety and Quality Service
Meat and Poultry Inspection Program
Washington, D.C. 20250

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December 15, 1977

[3410-37]

Food Safety and Quality Service

[9 CFR Parts 317 and 381]

MEAT OR POULTRY PRODUCTS

Proposed Net Weight Labeling

AGENCY: Department of Agriculture, Food Safety and Quality Service, Meat and Poultry Inspection.

ACTION: Proposed rule.

SUMMARY: This proposal provides uniform labeling requirements and prescribes uniform procedures for determining compliance with label statements of net contents of containers of meat products or poultry products. The proposal is intended to provide for more specific reasonable variations with respect to the statement of quantity of contents on labeling of meat and poultry products.

DATES: Comments must be received on or before March 2, 1978.

ADDRESSES: Written Comments to: Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. Oral Comments concerning the proposed amendments to the poultry products inspection regulations to: Dr. W. H. Dubbert, 202-447-3840. For additional information on comments, see supplementary information.

FOR FURTHER INFORMATION CONTACT:

Dr. W. H. Dubbert, Chief Staff Officer, Systems Development and Sanitation Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 202-477-3840.

SUPPLEMENTARY INFORMATION:

COMMENTS

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Hearing Clerk. Comments should bear a reference to the date and page number of this issue of the FEDERAL REGISTER. Any person desiring opportunity for oral presentation of views concerning the proposed amendments to the poultry products inspection regulations must make such request to Dr. Dubbert so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business.

BACKGROUND

Prior to enactment of the Wholesome Meat Act in 1967 and the Wholesome Poultry Products Act in 1968, USDA had very limited responsibility for taking action against misbranded and adulterated meat products and poultry products after the products were removed from an official establishment.

These Acts, however, extended the Department's authority over products after they left the official establishment.

In the recent case of "The Rath Packing Company v. M. H. Becker, et al.," the U.S. District Court for the Central District of California held that California and its political subdivisions were precluded by the Federal Meat Inspection Act (section 408, 21 U.S.C. 678) from imposing additional or different State net weight labeling requirements on federally inspected meat products, and that provisions of the Act regarding mislabeling or misbranding were applicable to such products at an official establishment and at any level of distribution including the retail store. However, the District Court held that § 317.2(h)(2) of the Federal meat inspection regulations (9 CFR 317.2(h)(2)) concerning net weight labeling was void for vagueness, and that no "reasonable variations" with respect to net weight labeling had been promulgated by the Secretary under the Act. Following the District Court decision, the Department published in December 1973 proposed regulations in response to the court's decision that current regulations concerning net weight labeling variations were vague (see 38 FR 33308-33313). The proposal offered procedures for determining allowable net weight variations both at the producing plant and at the time of sale. The proposal also stated that a mandatory quality control program would be required of each meat and poultry establishment for products in consumer packages.

During 1974, the Department held four public hearings throughout the United States explaining the new proposal to all interested parties. More than 1,600 written comments were recorded. Consumers generally opposed purchasing meat and poultry products that averaged and stated weight, even though historically most consumer items offered for sale by mass are sold in this manner. Reasonable variations in net content were spelled out in the proposal which would have resulted in packers targeting their production above the stated weight. Industry generally opposed the variation limits, contending they were too restrictive; however, no data was offered that would support limits other than those proposed.

The proposal also stated that recoverable liquids that drain from meat and poultry products after packaging would still be considered as part of the net weight at the time of sale. Consumers

and State weights and measure officials opposed this provision.

In October 1975, the Court of Appeals for the Ninth Circuit reversed the District Court in holding that the Federal meat inspection regulations were not void for vagueness, but affirmed the District Court in holding that section 408 of the Federal Meat Inspection Act preempted any State statutes or regulations regarding weight labeling requirements, "in addition to, or different than," the Federal standards.

The issue with respect to preemption was appealed to the United States Supreme Court, and on March 29, 1977, the Court held that various provisions of California law regarding net weight labeling were preempted by section 408 of the Federal Meat Inspection Act.

Although the decisions of the appellate courts generally supported the Department's current net weight labeling policies, it appears that more definitive regulations concerning reasonable variations from net weight labeling requirements would be in the public interest.

NEED FOR PROPOSED CONTROLS

Weights and measures officials of most States and municipalities are generally authorized by their respective jurisdictions to take action against handlers whose food products in their States or municipalities fail to meet the labeled statement of net contents. This authority, however, is constitutionally limited when federally inspected meat products or poultry products are involved. The States are precluded from imposing additional or different requirements than those made under the Federal Meat Inspection Act as amended (21 U.S.C. 601 et seq.), or the Poultry Products Inspection Act as amended (21 U.S.C. 451 et seq.) with respect to marking or labeling of the quantity of contents of containers of federally inspected product.

The proposal prescribes variations from net weight label statements which would be reasonable when determined by prescribed procedures. They are based on survey data concerning reasonable manufacturing practice. (These data are available from Dr. Dubbert.) The allowable variations are according to container size and the character of the product.

Although consumer comments on the original proposal did not support this concept in determining net content, the Department is proposing the procedure again after considerable dialogue and council with the Interagency Net Weight Committee. This group is represented by officials from the Food and Drug Administration (FDA), Federal Trade Commission (FTC), National Bureau of Standards, and USDA. State and local government agencies would have concurrent jurisdiction pursuant to section 408 of the Federal Meat Inspection Act and section 23 of the Poultry Products Inspection Act to enforce State or local provisions, that are not different from or in addition to these provisions, with re-

spect to federally inspected products outside official establishments.

Reasonable variations are differences in net contents that are characteristic of the product or the container, or the method or process, or combinations of these factors. Traditionally, the Department and other regulatory agencies (such as FDA) have considered net content declaration as correct if the container, on the average, contains the amount declared. Compliance with the averaging concept has been determined by small sample methods, since it is not economically feasible to employ sufficient personnel to weigh or measure every container produced. The average concept makes it necessary to place limitations on individual container variations from the declared label weight. The proposed variations are according to container size and nature of product. Homogeneous products, for example, soup, are not allowed the same variations as products made up of units, such as frankfurters, due to the inherent ease of packaging a desired mass of soup.

The undefined phrase "reasonable variation caused by gain or loss of moisture" would be removed from the regulations. To eliminate handling variables which are not controllable, it would be the responsibility of the official establishment to package and market its products so that declared contents are maintained throughout their disposition. Therefore, truthful net weight declaration would be required at any point of distribution and not only "at time of pack" or "at time of shipment from the official establishment."

Heretofore, the inspector observed the processing and packaging operation and checked several finished lots per week at the official establishment. This proposal requires official establishments to have an acceptable plant-operated quality control procedure for product to be sold to household consumers, in keeping with the establishment's responsibility under the Acts. Samples of all lots of such product would be examined by the establishment's employees. The inspector would evaluate (monitor) the plant's procedure for effectiveness, and make sufficient lot inspections based on prescribed procedures to determine whether or not the plant's procedures are meeting the standard of the procedures in the regulations.

The proposed lot inspection procedures would be designed to evaluate specific lots of product both at the official establishments and other distribution points. The lot would be considered as meeting the label weight, if the average net weight of the sample units representing the lot meets the label weight, and if there are no unreasonable shortages in individual sample units. To attain a high degree of confidence that products would meet such requirements at all distribution levels, a packer would be required to package, on the average, more product per container than the labeled weights. The exact overage would vary with products, container sizes, packers, and would

depend to a large extent upon the packer's ability to limit the net weight variability.

Immediate containers of bulk shipments of product intended for further processing, packaging, or for retail sale at which time a net weight statement is applied, and shipping containers holding small packages for sale at retail intact would not be required to be covered by an approved plant quality control program for net weight. However, the official establishment would be responsible for assuring that the net weight statement on such immediate or shipping containers is accurate at all points as determined by the procedure outlined in the proposal. The quality control program is not considered to be necessary, since such containers would not be sold to consumers.

In response to consumer comments made to the original proposal, the Department is now proposing that all juices and liquids that drain from meat and poultry after packaging and before sale will not be considered as part of the net weight. Since both raw and processed meat and poultry products tend to drain to some degree, it will be necessary for processors marking net weight at the producing plant to have knowledge of the amount of liquid, meat juices, brine, etc., that will drain from the time of preparation to the time of sale, so that net weight marking will be accurate.

The proposal also contains other changes in net weight labeling of bacon. Certain cartons of shingle packed sliced bacon are exempt, under the current regulations, from the general requirements concerning the declaration of net weight in both ounces and pounds and the position of the net weight statement on the package. The reason for such exemptions is that bacon has historically been labeled in such a manner. However, it appears that the consumers interest in meaningful labeling would be served better if such packages were to conform to the net weight labeling requirements applicable to the vast majority of meat food products. Therefore, these exemptions would be terminated by this proposal.

Under the proposal, small packages (less than 1/2 ounce net weight) would be exempt from bearing statements of net weight or measure, provided that their shipping containers bore net weight statements that were in accord with the regulations. Such exemption is permitted under the Acts and is currently in the meat inspection regulations. However, changes have been made in the proposed regulations to clarify this exemption. For consistency, this exemption has also been extended to poultry products. Additionally, it is proposed that if an establishment wishes to place a net weight statement on a small package, such statement would be exempt from the normal type size, dual declaration, and placement requirements. This exemption is based upon the lack of labeling space inherent on such small packages.

Accordingly, the proposed changes to the Federal meat inspection regulations (9 CFR Part 317) and the poultry prod-

ucts inspection regulations (9 CFR Part 381) are as set forth below.

1. Section 317.2(h) of the Federal meat inspection regulations would be amended by revising subparagraphs (1) and (2), amending the first sentence in subparagraph (4), adding a new sentence to the end of subparagraph (5), amending subparagraph (9)(ii), deleting subparagraph (9)(iv), adding a new sentence to the end of subparagraph (11), revising subparagraph (13), and by adding a new subparagraph (14) to read as follows:

§ 317.2 Labels: Definitions; required features.

* * * * *

(h) (1) (i) The label shall bear a statement of the quantity of contents in terms of net weight or measure as provided in subparagraph (4) of this paragraph (h). However, packages for sale at retail intact need not bear a statement of the net weight, if such packages are "small packages," as described in § 317.2(h)(9)(i) and the total net weight of the contents of the shipping container is marked on such container.

(ii) The statement of net quantity of contents shall appear, except as otherwise permitted under this paragraph (h), on the principal display panel of all containers to be sold at retail intact, in conspicuous and easily legible boldface print or type, in distinct contrast to other matter on the container, and shall be declared in accordance with the provisions of this paragraph (h).

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container, exclusive of tare as defined in § 317.18; and variations from the net weight stated on the label, as defined in § 317.18, are hereby found to be reasonable and are allowable.

* * * * *

(4) Except as provided in § 317.7 or in subparagraph (1) of this paragraph (h), the statement shall be expressed in terms of net avoirdupois weight or liquid measure. * * *

(5) * * * Subparagraph (9) of this paragraph (h) permits certain exceptions from the provisions of this subparagraph (5) for small packages, and subparagraph (12) of this paragraph (h) permits certain exceptions from the provisions of this subparagraph (5) for multi-unit packages.

* * * * *

(9) * * *

(ii) Labels for small packages exempt from the requirement for a net weight statement under subparagraph (1) of this paragraph (h) shall also be exempt from the type size, dual declaration and placement requirements of this paragraph (h).

* * * * *

(11) * * * All other packages are "standard weight packages."

* * * * *

(13) Shingle-packed sliced bacon cartons containing product weighing other than 8 ounces, 1 pound, or 2 pounds shall have the statement of the net weight shown with the same prominence as the most conspicuous feature on the label and printed in a color of ink contrasting sharply with the background.

(14) (i) To provide maximum assurance that product in immediate containers bearing net weight statements conforms with the statement of net weight on the labels of the products, the operator of the official establishment packaging the product shall install a quality control system which must receive prior approval of the Administrator. As a minimum, the application for approval of the system shall include a written description of the sampling procedures, including the number of sample units to be drawn at any one time, the frequency of sampling, the minimum number of sample units upon which determination of compliance would be based, and limits for individual sample units, sample groups, and averages of all sample units representing a production run which if exceeded would result in retention of product. The limits for individual sample units may not exceed those defined in Table II of § 317.18 and the average of all sample units must equal at least the labeled net weight of the immediate container. The methods of establishing tare weights must be described if they are used. Testing procedures employed to check the accuracy of filling equipment and scales shall be described, and systematic records must be maintained of all determinations and corrective actions, and must be made available to the Program inspector. Acceptance is based on the ability of the system to provide the controls and information necessary to assure that the product will meet the labeling claims of net weight, when determined by the procedures prescribed in § 317.18 of this subchapter; that variations within packages will remain within the limits prescribed in § 317.18; and that product found out of compliance will be held for proper disposition in accordance with the regulations in this subchapter; and that the system will permit proper monitoring for effectiveness by plant personnel and Program inspectors.

(ii) Approval of a system under this subparagraph (14) does not relieve the operator of the official establishment from assuring that the net weight statement as determined by the procedure prescribed in § 317.18 is accurate at all points. However, such a system is not required with respect to immediate containers of bulk shipments of unlabeled products intended for further preparation, packaging, or for retail sale at which time a net weight statement is applied, and shipping containers holding small packages for sale at retail intact. However, the official establishment shall be responsible for assuring that the net weight statement on such immediate or shipping container is accurate at all points as determined by the procedure

prescribed in § 317.18. The Program inspector shall monitor the plant's system for proper application and effectiveness to determine whether it is resulting in labeling which meets the requirements of this paragraph and § 317.18, including conducting such samplings and weighings of products as are necessary to enable the Program inspector to determine that the products prepared at the official establishment are not misbranded. Plant systems which do not result in the labeling of products in accordance with this paragraph must be revised to conform to Program standards.

2. The Table of Contents is amended to reflect the following change, and a new § 317.18 is added to read as follows:

§ 317.18 Quantity of contents labeling; reasonable variations when determined by prescribed procedures.

(a) Labels on immediate containers of products shall show an accurate statement of the quantity of contents in terms of weight, measure or numerical count, subject to reasonable variations and the small package exemption established by regulations in this subchapter.

(b) (1) The product variations from net weight label statements found in Table II of this paragraph are found to be reasonable when determined by the prescribed procedures, including defined sampling plans. Variations determined by such procedures shall be used by the Program inspector for monitoring all products at the producing establishment; and by anyone conducting net weight compliance evaluation for all products outside the official establishment.

(2) The following procedures shall be used:

(i) Select the group to which the product belongs as defined in Table I.

TABLE I¹

Group definitions for immediate containers of—		
	Homogeneous products that are fluid when filled	All other products
Group:		
1.....	Less than 3 oz.....	Less than 3 oz.
2.....	3 to 16 oz.....	
3.....	Over 16 oz.....	3 to 7 oz.
4.....		Over 7 to 48 oz.
5.....		Over 48 to 160 oz.
6.....		Over 160 oz.

¹ Sample units from any lot of random weight packages may fall into more than 1 group.

(ii) Randomly select 10 packages (sample units) from: (a) Any lot containing 250 packages or less of any product in one or more of Groups 1, 2, 3, 4, or 5, or (b) any size lot of any product in Group 6. Randomly select 30 packages from all other lots. These randomly selected packages constitute the sample for the purposes of this section. A "lot" for purposes of this section shall be one type and style of product, produced by one establishment and bearing identical labels and available for inspection at one place at one time; except that random weight packages otherwise conforming to this definition may have differing statements of net weight.

(iii) Determine the net weight of each package in the sample. The net weight of all products shall be the gross weight of the immediate container and its contents minus the tare weight. (a) The tare weight, except for frozen products, shall be: (1) For those products where the entire contents are to be consumed, the weight of the dry container; (2) for those products where the entire contents are not to be consumed, the weight of the container, packaging material containing adhering or absorbed juices or absorbed fats or solids, and free juices within the container or within the packaging. The tare weight shall be determined by measuring the gross weight of the immediate container and its contents and subtracting the weight of the drained product. Drained product is obtained by placing the product on a U.S. Standard No. 8 mesh screen, 8 inches in diameter for product less than 3 pounds and 12 inches in diameter for product 3 pounds and over, and allowing it to drain for 2 minutes. Weight of the drained product is obtained by determining the weight of the drained product and the screen, minus the weight of the dry screen. (b) The tare weight for frozen products shall be the weight of the container and any adhering ice crystals. (c) A tare weight may be printed on the immediate container or shipping container as provided for in § 317.2(h). (d) For random weight packages the tare weight is calculated individually for each container. (e) For standard weight packages, the tare weight is calculated at locations other than the producing establishment by averaging the tare weights of three randomly selected packages. At the producing establishment, the tare weight for standard weight packages is calculated by averaging the tare weights of the total number of packages sampled. The total number

of packages to be sampled is calculated by initially randomly selecting three packages and applying the following table:

Tare weight—Standard weight packages—at producing establishments

If,	Then,
the difference (ounces) in the weight between the heaviest and lightest of the 3 containers is—	the total number of packages to be sampled is—
0 to $\frac{1}{16}$ -----	3
$\frac{3}{16}$ -----	6
$\frac{1}{4}$ -----	9
$\frac{5}{16}$ -----	¹ 12
$\frac{3}{8}$ or more -----	¹ 15

¹ Only 10 packages must be sampled if only 10 packages are required to be sampled for net weight purposes under § 317.18(b) (2) (ii).

(iv) For standard weight packages, determine the average net weight of the sample units by totaling all net weights in the sample and dividing by the number of packages in the sample. For random weight packages, determine the difference between the average of the actual net weights of the packages and the average of their declared net weights.

(v) For standard weight packages, if the average net weight of the sample units is less than the labeled weight or, in a sample of random weight packages if the difference between the average actual net weight and the average declared net weight is a minus number, the lot represented by the sample fails.

(vi) For standard weight packages, if the average net weight of the sample units equals at least the labeled net weight, compare the largest minus variation of any package in the sample with the limits defined for the applicable group in Table II of this paragraph, and if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails. In a sample of random weight packages, if the difference between the average net weight and the average declared net weight is zero or a plus number, compare the largest minus variation of any package in the sample with the limits defined for the smallest numbered group represented in the sample; if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails.

TABLE II.—Limits for immediate containers for groups 1 through 6^{1 2}

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
	4.15 gm.-----	8.31 gm.-----	20.77 gm.-----	41.53 gm.-----	(4)
	0.15 oz.-----	0.29 oz.-----	0.73 oz.-----	1.47 oz.-----	(4)
	$\frac{1}{32}$ oz.-----	$\frac{1}{16}$ oz.-----	$\frac{1}{8}$ oz.-----	$\frac{1}{4}$ oz.-----	(4)
10 pct of label weight-----	$\frac{1}{16}$ oz.-----	$\frac{1}{8}$ oz.-----	$\frac{1}{4}$ oz.-----	$\frac{1}{2}$ oz.-----	(4)
	$\frac{1}{8}$ oz.-----	$\frac{1}{4}$ oz.-----	$\frac{1}{2}$ oz.-----	1 lb.-----	(4)
	$\frac{1}{4}$ oz.-----	$\frac{1}{2}$ oz.-----	1 lb.-----	5 lb.-----	(4)
	(4)	1 lb.-----	5 lb.-----	25 lb.-----	(4)
	0.01 lb.-----	0.02 lb.-----	0.04 lb.-----	0.09 lb.-----	(4)

¹ Use the limits recorded in terms of calibrations of the scale being used. E.g. If the scale is in 16ths, use limits in 16th; if in grams, use gram limits. Do not convert.

² If a sample of packages marked with random weights spans two or more groups, the limits for the smallest numbered group represented shall apply to all packages in the sample.

³ The limit is the labeled net weight when the sensitivity of the scales being used does not permit calibrations as precise as those recorded above.

⁴ The limit for Group 6 shall be 4 oz.

(vii) Any lot which fails under this paragraph (b) must be repacked and re-sampled for compliance with the regulations in this part.

The poultry products inspection regulations in Part 381 would be amended as set forth below.

3. Section 381.121 would be amended by revising paragraph (a), by deleting the first sentence of paragraph (b), by adding a new sentence to the end of paragraph (c) (5), by revising paragraphs (c) (6) and (9), and by adding new subparagraphs (10) and (11) to read as follows:

§ 381.121 Quantity of contents.

(a) The label shall bear a statement of the quantity of contents in terms of net weight or measure as provided in paragraph (c) (5) of this section. However, packages for sale at retail intact need not bear a statement of the net weight, if such packages are "small packages" as described in paragraph (c) (9) (i) of this section, and the total net weight of the contents of the shipping container is marked on such container.

* * * *

(c) * * *
(5) * * * Subparagraph (8) of this paragraph (c) permits certain exceptions from the provisions of this subparagraph (5) for multi-unit packages, and subparagraph (9) of this paragraph (c) permits certain exceptions from the provisions of this subparagraph (5) for small packages.

(6) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container, exclusive of tare as defined in § 381.121a; and variations from the net weight stated on the label, as defined in § 381.121a are hereby found to be reasonable and are allowable. The statement shall not include any term qualifying a unit of weight, measure or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum" or words of similar import, except as provided in paragraph (b) of this section.

* * * *

(9) The following exemptions from the requirements contained in this section are hereby established:

(i) Individually wrapped and labeled packages of less than ½-ounce net weight which are in a shipping container, need not bear a statement of net quality of contents as specified in this section when the statement of net quantity of contents on the shipping container meets the requirements of this section.

(ii) Labels for small packages exempt from the requirement for a net weight statement under paragraph (a) of this section shall also be exempt from the type size, dual declaration and placement requirements of this section.

(10) For the purpose of this Subpart N, a "random weight package" is one of a lot, shipment, or delivery of packages of the same product, with varying weights and with no fixed weight pattern. All other packages are "standard weight packages."

(11) (i) To provide maximum assurance that poultry product in immediate containers bearing net weight statements conforms with the statement of net weight on the labels of the product, the operator of the official establishment packaging the product shall install a quality control system which must receive prior approval of the Administrator. As a minimum, the application for approval of the system shall include a written description of the sampling procedures including the number of sample units drawn at any one time, the frequency of sampling, the minimum number of sample units upon which determination of compliance would be based, and limits for individual sample units, sample groups, and averages of all sample units representing a production run which if exceeded would result in retention of product. The limits for individual sample units may not exceed those defined in Table II of § 381.121a and the average of all sample units must equal at least the labeled net weight of the immediate container. The method of establishing tare weights must be described if they are used. Testing procedures employed to check the accuracy of filling equipment and scales shall be described, and systematic records must be maintained of all determinations and corrective actions, and must be made available to the Inspection Service employee. Acceptance is based on the ability of the system to provide the controls and information necessary to assure that the product will meet the labeling claims of net weight when determined by the procedures prescribed in § 381.121a; that variations within packages will remain within the limits prescribed in § 381.121a; and that product found out of compliance will be held for proper disposition in accordance with the regulations in this part; and that the system will permit proper monitoring for effectiveness by plant personnel and Inspection Service inspectors.

(ii) Approval of a system under this subparagraph (11) does not relieve the operator of the official establishment from assuring that the net weight statement as determined by the procedure prescribed in § 381.121a is accurate at all points. However, such a system is not required with respect to immediate containers of bulk shipments of unlabeled product intended for further processing, packaging, or for retail sale at which time a net weight statement is applied, and shipping containers holding small packages for sale at retail intact. However, the official establishment shall be responsible for assuring that the net weight statement on such immediate or shipping container is accurate at all points as determined by the procedure prescribed in § 381.121a. The Inspection Service inspector shall monitor the plant's system for proper application and effectiveness to determine whether it is resulting in labeling which meets the requirements of this paragraph and § 381.121a, including conducting such samplings and weighings of poultry products as are necessary to enable the Inspection Service inspector to determine that the

poultry products prepared at the official establishment are not misbranded. Plant systems which do not result in the labeling of poultry products in accordance with this paragraph must be revised to conform to Program standards.

4. The Table of Contents is amended to reflect the following change, and a new § 381.121a is added to read as follows:

§ 381.121a Quantity of contents labeling; reasonable variations when determined by prescribed procedures.

(a) Labels on immediate containers of products shall show an accurate statement of the quantity of contents in terms of weight, measure or numerical count, subject to reasonable variations and small package exemption established by regulations in this Part 381.

(b) (1) The product variations from net weight label statements found in Table II of this paragraph are found to be reasonable when determined by the prescribed compliance procedures, including defined sampling plans. Variations determined by such procedures shall be used by the Inspection Service inspector for monitoring all products at the producing establishment; and by anyone conducting net weight compliance evaluation for all products outside the official establishment.

(2) The following procedures shall be used:

(i) Select the group to which the product belongs as defined in Table 1.

TABLE I¹

Group:	Group definitions for immediate containers of—	
	Homogeneous products that are fluid when filled	All other products
1.....	Less than 3 oz.....	Less than 3 oz.
2.....	3 to 16 oz.....	
3.....	Over 16 oz.....	3 to 7 oz.
4.....		Over 7 to 48 oz.
5.....		Over 48 to 160 oz.
6.....		Over 160 oz.

¹ Sample units from any lot of random weight packages may fall into more than 1 group.

(ii) Randomly select 10 packages (sample units) from: (a) any lot containing 250 packages or less of any product in one or more of Groups 1, 2, 3, 4, or 5, or (b) any size lot of any product in Group 6. Randomly select 30 packages from all other lots. These randomly selected packages constitute the sample for the purposes of this section. A "lot" for purposes of this section shall be one type and style of product, produced by one establishment and bearing identical labels and available for inspection at one place at one time; except that random weight packages otherwise conforming to this definition may have differing statements of net weight.

(iii) Determine the net weight of each package in the sample. The net weight of all products shall be the gross weight of the immediate container and its contents minus the tare weight. (a) The tare weight, except for frozen products, shall be: (1) For those products where the entire contents are to be consumed, the weight of the dry container; (2) for those products where the entire contents are not to be consumed, the weight of the container, packaging material containing adhering or absorbed juices or absorbed fats or solids, and free juices within the container or within the packaging. The tare weight shall be determined by measuring the gross weight of the immediate container and its contents and subtracting the weight of the drained product. Drained product is obtained by placing the product on a U.S. Standard No. 8 mesh screen, 8 inches in diameter for product less than 3 pounds and 12 inches in diameter for product 3 pounds and over, and allowing it to drain for 2 minutes. Weight of the drained product is obtained by determining the weight of the drained product and the screen, minus the weight of the dry screen. (b) The tare weight for frozen products shall be the weight of the container and any adhering ice crystals. (c) A tare weight may be printed on the immediate container or shipping container as provided for in § 381.121 (a). (d) For random weight packages the tare weight is calculated individually for each container. (e) For standard weight packages, the tare weight is calculated at locations other than the producing establishment by averaging the tare weights of three randomly selected packages. At the producing establishment, the tare weight for standard weight packages is calculated by averaging the tare weights of the total number of packages sampled. The total number of packages to be sampled is calculated by initially randomly selecting three packages and applying the following table:

Tare weight—Standard weight packages—at producing establishments

If,	Then,
the difference (ounces) in the weight between the heaviest and lightest of the 3 containers is—	the total number of packages to be sampled is—
0 to 1/8	3
3/16	6
1/4	9
5/16	12
3/8 or more	15

¹ Only 10 packages must be sampled if only 10 packages are required to be sampled for net weight purposes under § 381.121a(b) (2) (ii).

(iv) For standard weight packages, determine the average net weight of the sample units by totaling all net weights in the sample and dividing by the number of packages in the sample. For random weight packages, determine the difference between the average of the actual net weights of the package and the average of their declared net weights.

(v) For standard weight packages, if the average net weight of the sample unit is less than the labeled weight or, in a sample of random weight packages, if the difference between the average actual net weights and the average declared net weights is a minus number, the lot represented by the sample fails.

(vi) For standard weight packages, if the average net weight of the sample units equals at least the labeled net weight, compare the largest minus variation of any package in the sample with the limits defined for the applicable group in Table II of this paragraph, and if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails. In a sample of random weight packages, if the difference between the average net weights and the declared net weights is zero or a plus number, compare the largest minus variation of any package in the sample with the limits defined for the smallest numbered group represented in the sample; if the variation is less than that in Table II, the lot represented by the sample passes; and if the variation is greater than that in Table II, the lot fails.

TABLE II.—Limits for immediate containers for groups 1 through 6^{1 2}

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
	4.15 gm.....	8.31 gm.....	20.77 gm.....	41.53 gm.....	(4)
	0.15 oz.....	0.29 oz.....	0.73 oz.....	1.47 oz.....	(4)
	$\frac{1}{32}$ oz.....	$\frac{1}{32}$ oz.....	$\frac{1}{32}$ oz.....	$1\frac{1}{32}$ oz.....	(4)
10 pct of label weight.....	$\frac{1}{16}$ oz.....	$\frac{1}{16}$ oz.....	$\frac{1}{16}$ oz.....	$\frac{1}{16}$ oz.....	(4)
	$\frac{1}{10}$ oz.....	$\frac{1}{10}$ oz.....	$\frac{1}{10}$ oz.....	$\frac{1}{10}$ oz.....	(4)
	$\frac{1}{8}$ oz.....	$\frac{1}{8}$ oz.....	$\frac{1}{8}$ oz.....	$\frac{1}{8}$ oz.....	(4)
	(3)	$\frac{1}{4}$ oz.....	$\frac{1}{4}$ oz.....	$\frac{1}{4}$ oz.....	(4)
	0.01 lb.....	0.02 lb.....	0.04 lb.....	0.09 lb.....	(4)

¹ Use the limits recorded in terms of calibrations of the scale being used. E.g. If the scale is in 16ths, use limits in 16th; if in grams, use gram limits. Do not convert.

² If a sample of packages marked with random weights spans two or more-groups, the limits for the smallest numbered group represented shall apply to all packages in the sample.

³ The limit is the labeled net weight when the sensitivity of the scales being used does not permit calibrations as precise as those recorded above.

⁴ The limit for Group 6 shall be 4 oz.

(vii) Any lot which fails under this paragraph (b) must be repacked and re-sampled for compliance with the regulations in this Subpart.

* * * * *

NOTE.—The Food Safety and Quality Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., on November 17, 1977.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

(42 FR 61279-84)
December 2, 1977



UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND QUALITY SERVICE
MEAT AND POULTRY INSPECTION PROGRAM
WASHINGTON, D.C. 20250

Meat and Poultry Inspection Manual

December 1977

CHANGE: 77-12

MAINTENANCE INSTRUCTIONS

Remove Page	Insert Page	Numbered
295 through 314	295 through 312	77-12

Pen-and-Ink Changes

MPI Directive 915.8, page 5, at end of VI C 2 b, add "furnish necessary documentation to the Assistant Deputy Administrator, FO.", and in VI C 4 b ii, line 5, change item "7" to item "G."

Page 213, delete MP Form 412-5.

Page 213, MP Form 412-8, under "Use," cross off "Belgium" and "France."

Page 278, section 27.1 (b), change the first paragraph to read: "Only products from foreign plants listed in the Meat and Poultry Inspection Directory are acceptable."

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